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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,180

Applicant(s)

MUELLER ET AL.

Examiner

FRANKLIN S. ANDRAMUNO

Art Unit

2424

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/10/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-31, 33-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-31, 33-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/10/08 have been fully considered but they are not persuasive. Applicant argues on page 10 fourth paragraph, "the user input data stores users' input data relating to broadcast elements." While applicant's point is understood, examiner disagrees. Okuhata teaches on page 2 paragraph (0006) the invention provides a distributed scheduler system connecting a plurality of schedulers to each other through a network. In this case also, the scheduler includes a database. This shows that there are several user input registered on the system taught by Okuhata. Moreover, this system comprises of a plurality of users connected through a network.

In addition, applicant argues on page 14 third paragraph, "Okuhata does not disclose any user input data store for storing users' input data relating to broadcast elements. Okuhata teaches on page 2 paragraph (0007) the present invention provides a schedule adjusting method for adjusting schedules between a plurality of schedules connected to each other through a network. Moreover, schedule data are stored in a database of each of scheduler identifiers.

Furthermore, applicant argues on page 14 fifth paragraph, "the present invention is directed to a scheduling system that can take account of multiple users' inputs to interactively schedule and reschedule broadcast elements." Examiner again disagrees. As shown in the previous paragraphs, Okuhata teaches a system capable of adjusting a

plurality of users in a network. Moreover, Daniels teaches the communication between the parties can be interactive (page 15 paragraph (0152)).

Lastly, applicant argues on page 15 fourth paragraph, "Okuhata does not disclose a playlist." Examiner again disagrees. Okuhata teaches on figure 19 a schedule table (116) which can be considered a playlist.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1, 4-7, 9-16, 18-22 and 25-28, 38, 49, and 52-57 are rejected under 35 U.S.C. 102(e) as being unpatentable by Okuhata (US 2002/0029238 A1).

Regarding claim 1, Okuhata discloses a scheduling system for use in broadcasting comprising (**Schedule Data (20) in figure 2a**): i) a scheduler for selecting and scheduling broadcast elements for broadcasting (**Schedule database Processing Unit (36) in figure 2a**); and ii) a user input data store for storing users' input data relating to the broadcast element (**page 2 paragraph (0006)**) in which the scheduler is adapted to access the user input data store and to schedule broadcast elements (**User Input Unit (42) in figure 2a**), the scheduling of one or more broadcast elements being

at least partially determined by stored user input data (**page 1 paragraph (0003) lines 1-8**).

Regarding claim 4, Okuhata discloses a scheduling system according to any one of the preceding claims wherein, in use, stored users' input data comprises one or more broadcast elements (**Figure 1**).

Regarding claim 5, Okuhata discloses a scheduling system according to any one of the preceding claims wherein, in use, stored users' input data identifies one or more broadcast elements (**Schedule Opening Processing Unit (28) in figure 2a**).

Regarding claim 6, Okuhata discloses a scheduling system according to claim 5 wherein at least one identified broadcast element comprises an item from a playlist (**Figure 3A**).

Regarding claim 7, Okuhata discloses a scheduling system wherein at least one identified broadcast element comprises material sourced externally to the broadcasting system (**Broadcast Control Information (68) in figure 4a**).

Regarding claim 9, Okuhata discloses a scheduling system which further comprises an asset store for storing broadcast elements to be scheduled by the scheduler (**page 2 paragraph (0014)**).

Regarding claim 10, Okuhata discloses a scheduling system according to claim 9 wherein the asset store is adapted to store data relating to the broadcast elements

(page 2 paragraph (0006) lines 5-10), in addition to storing broadcast elements (page 2 paragraph (0012)).

Regarding claim 11, Okuhata discloses a scheduling system which further comprises a user input processor for processing user inputs **(page 2 paragraph (0007) lines 3-7).**

Regarding claim 12, Okuhata discloses a scheduling system according to claim 11 wherein, in use, at least one user input comprises a broadcast element and the user input processor comprises an editing tool for use in editing broadcast elements **(page 3 paragraph (0037) lines 14-16).**

Regarding claim 13, Okuhata discloses a scheduling system wherein the user input processor is adapted to sort user input data according to type **(Adjusting Order Party (110) in figure 19).**

Regarding claim 14, Okuhata discloses a scheduling system for use in supporting more than one broadcast channel during the same broadcast period **(Figure 19)**, wherein the users' input **(page 2 paragraph (0006))** processor is adapted to sort user input data according to channel **(Adjusting Candidate in figure 19).**

Regarding claim 15, Okuhata discloses a scheduling system wherein the user input processor is adapted to parse users' **(page 2 paragraph (0006))** input data **(Figure 11A).**

Regarding claim 16, Okuhata discloses a scheduling system wherein, in use, stored users' input (**page 2 paragraph (0006)**) data identifies at least one broadcast element, and wherein the user input processor is adapted to measure a number of times said broadcast element is so identified (**Pseudo Processor Unit (32) in figure 2A**).

Regarding claim 18, Okuhata discloses a scheduling system, in use, the user input processor is connected to deliver processed user inputs for storage in the user input data store for use by the scheduler in scheduling broadcast elements (**Figure 10**).

Regarding claim 19, Okuhata discloses a scheduling system wherein the system is provided with a first output for scheduled broadcast elements for broadcasting and a second output for processed user inputs and/or broadcast elements (**Figure 11A**).

Regarding claim 20, Okuhata discloses a scheduling system further comprising time dependent control means (**page 4 paragraph (0053) lines 6-12**) to control the action of the scheduler according to time period (**page 1 paragraph (0005) lines 1-4**).

Regarding claim 21, Okuhata discloses a scheduling system according to claim 20 wherein the time period comprises part of a day, such that the action of the scheduler can be controlled to be different at different times of day (**Figure 19**).

Regarding claim 22, Okuhata discloses a scheduling system according to claim 20 wherein the time period comprises one or more days, such that the action of the scheduler can be adjusted to be different on at least two different days (**Figure 20A**).

Regarding claim 25, Okuhata discloses a scheduling system adapted for connection to a communication system for receiving user inputs (**Page 7 paragraph (0072) lines 1-3**).

Regarding claim 26, Okuhata discloses a scheduling system according to claim 25 having a response time of the order of ten minutes between receipt of a user input (**Page 2 paragraph (0010) lines 5-7 also note the immediate response**) and delivery of a response which is at least partly dependent on the result of a scheduling operation by the scheduler in relation to the received user input (**User Input (42) in figure 2a**).

Regarding claim 27, Okuhata discloses a scheduling system according to claim 26 wherein said delivery of a response comprises broadcasting of a broadcast element (**Broadcast Control Information (60) in figure 4a**).

Regarding claim 28, Okuhata discloses a scheduling system according to claim 26 wherein said delivery of a response comprises the output of a communication in reply to the user input (**Schedule Connection Request (62) in figure 4b**).

Regarding claim 38, Okuhata discloses a broadcasting system (**Schedule Data (20) in figure 2a**) comprising: i) an asset store for storing broadcast elements (**Schedule database Processing Unit (36) in figure 2a**); ii) a user input data store for storing user input data (**Scheduler Processing Unit (14) in figure 2b**); iii) an asset processor for processing broadcast elements; and iv) a user input processor for processing user inputs (**User Input Unit (42) in figure 2a**), wherein the user input processor is adapted to process user input to provide users' input data (**page 2**

paragraph (0006)) for storage in the user input data store and the asset processor is adapted to process broadcast elements for storage in the asset store (**page 1 paragraph (0003) lines 1-8**)..

Regarding claim 49, Okuhata discloses a user input processor for use with a broadcasting system (**Network in figure 2b**) according to any one of claims 38 to 48, having an input for receiving user inputs (**User input Unit (42) in figure 2a**), at least one processing tool for processing received user inputs (**Schedule Processing Unit (38) in figure 2a**), a first output for processed user inputs for use by the broadcasting system in scheduling broadcast elements and a second output for processed user inputs (**Schedule Database (18) in figure 2a**).

Regarding claim 52, Okuhata discloses a method of broadcasting, said method comprising the steps of: i) receiving a list of broadcast elements (**Figure 5**); ii) receiving a users' inputs (**page 2 paragraph (0006)**) relating to at least one broadcast element (**user input (42) in figure 2a**), and iii) responding to the received users' inputs (**figure 6**).

Regarding claim 53, Okuhata discloses a method according to claim 52 wherein a received users' (**page 2 paragraph (0006)**) inputs (**User Input (42) in figure 2a**) comprises at least one broadcast element in addition to the listed broadcast elements (**Broadcast Control Information (60) in figure 4a**).

Regarding claim 54, Okuhata discloses a method according to either one of claims 52 or 53 wherein a received users' (**page 2 paragraph (0006)**) input (**User Input**

(42) in figure 2a) comprises at least one identifier for a broadcast element from the list **(Scheduler Identifier (90) in figure 4d)**.

Regarding claim 55, Okuhata discloses a method according to either one of claims 53 or 54 wherein step iii) comprises broadcasting the additional broadcast element **(Broadcast Control Information (60) in figure 4a)** together with at least one broadcast element from the list **(Figure 7a)**.

Regarding claim 56, Okuhata discloses a method according to any one of claims 52 to 55 wherein step iii) comprises outputting a reply to the user input **(Page 3 paragraph (0047))**.

Regarding claim 57, Okuhata discloses a method according to claims 53 and 56 wherein said reply comprises an estimated broadcast time for the additional broadcast element **(page 2 paragraph (0010) lines 5-10)**.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8, 23-24, 29-31, 33-37, 50 and 64-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okuhata (US 2002/0029238 A1) in view of Daniels (US 2002/0100044 A1). Hereinafter referred as Okuhata and Daniels.

Regarding claims 8, 23-24, 29-37, 50, and 64-68, Okuhata discloses a scheduling system according to claim 7 wherein at least one identified broadcast element comprises material **(Broadcast Control Information (68) in figure 4A)**. **However, Okuhata fails to teach the use of broadcasting scheduling live.** Daniels teaches on **(Page 15 paragraph (0152) lines 11-14)** of a live broadcasting scheduling.

Therefore, it would have been obvious at the time of the invention to include the scheduling of a live broadcast. This a useful combination because clients are able to schedule a live programming through their remote control, telephone, or computer.

Regarding claim 23, Okuhata discloses a scheduling system according to any one of claims 20, 21 or 22 wherein the scheduler is adapted to select and schedule broadcast elements **(Figure 18)**, and wherein the time dependent control means **(Figure 19)** is adapted to control the selection of said one or more broadcast elements in a time dependent manner **(Step Two in figure 14 Daniels)**.

Regarding claim 24, Okuhata discloses a scheduling system according to any one of claims 20 to 23 wherein the scheduler is adapted to schedule broadcast elements by applying at least one rule **(Pseudo Server processing in figure 16)**, and wherein the time dependent control means is adapted to control the rule or rules applied in a time dependent manner **(Step Two in figure 14 Daniels)**.

Regarding claim 29, Okuhata discloses a broadcast assembly system for assembling broadcast elements for broadcast, the system comprising an asset store for storing one or more broadcast elements (**Storing Unit (15) in figure 2b**), and an asset processor for processing broadcast elements (**Scheduler Processing Unit (24) in figure 2b**), wherein the asset store, in use, stores at least one rule or algorithm for use in assembling users' inputs (**page 2 paragraph (0006)**) broadcast elements for broadcast and the asset processor provides at least one tool for processing broadcast elements by editing (**page 13 paragraph (0130) lines 1-4 Daniels**).

Regarding claim 30, Okuhata discloses a broadcast assembly system according to claim 29, the system further comprising a scheduler for assembling broadcast elements by scheduling (**Scheduler Processing Unit (14) in figure 2B**).

Regarding claim 31, Daniels discloses a broadcast assembly system according to either one of claims 29 or 30 wherein at least one stored rule or algorithm (**page 13 paragraph (0130) lines 1-4**) comprises a scheduling criterion for use in scheduling broadcast elements for broadcast (**Figure 19**).

Regarding claims 33 and 35, Okuhata discloses a broadcast assembly system according to either one of claims 31 or 32, wherein the asset processor comprises means to create or modify at least one scheduling criterion (**Figure 3b**).

Regarding claim 34, Daniels discloses a broadcast assembly system according to any one of claims 32 to 33 wherein at least one stored rule or algorithm is time dependent (**Step Two in figure 14**).

Regarding claim 36, Okuhata discloses an interactive gaming system comprising a broadcast assembly system according to claim 35 (**Figure 4a**).

Regarding claim 37, Okuhata discloses a broadcast assembly system according to any one of claims 32 to 36, further comprising a user input processor (**Scheduler Processing Unit (14) in figure 2b**), and wherein the scheduling criterion comprises a rule or algorithm for responding to processed user inputs (**page 18 paragraph (0171) lines 5-10**).

Regarding claim 50, Daniels discloses a user input processor according to claim 49 wherein the second output is adapted for connection to the Internet (**page 2 paragraph (0012) lines 1-4**).

Regarding claim 64, Okuhata discloses a method of assembling broadcast elements for broadcasting, said method comprising the steps of: i) processing at least one broadcast element and loading the processed broadcast element to an asset store (**Storing Unit (15) in figure 2b**); ii) receiving, via a user input, data relating to at least one broadcast element in the asset store (**Scheduler Processing Unit (24)**; and iii) storing one or more rules or algorithms for use in assembling a set of broadcast elements for broadcast in accordance with received user's (**page 2 paragraph (0006)**) input data (**page 13 paragraph (0130) lines 1-4 Daniels**).

Regarding claim 65, Daniels discloses a method according to claim 64, further comprising the step of assembling a set of broadcast elements for broadcast in

accordance with received data and at least one stored rule or algorithm (**page 13 paragraph (0130) lines 1-4**).

Regarding claim 66, Daniels discloses a method according to either one of claims 64 or 65 wherein at least one stored rule or algorithm (**page 13 paragraph (0130) lines 1-4**) is time dependent such that an assembled set of broadcast elements is different at different times (**Figure 19 Okuhata**).

Regarding claim 67, Okuhata discloses a method according to any one of claims 64 to 66, further comprising the step of receiving, via a user input (**User Input Unit (42) in figure 2a**), at least one broadcast element, and wherein an assembled set of broadcast elements comprises at least one broadcast element received via a user input (**Schedule Display Processing Unit (34) in figure 2A**).

Regarding claim 68, Okuhata discloses a method according to any one of claims 64 to 67 which further comprises the step of broadcasting an assembled set (**Schedule Data (72) in figure 4a**).

3. Claims 17, 39-48, 51, 58-63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okuhata (US 2002/0029238 A1) in view of Bansal et al (US 2004/0083489 A1). Hereinafter referred as Okuhata and Bansal.

Regarding claim 17, Okuhata discloses a scheduling system according to claim 16 wherein the scheduler is adapted to rank broadcast elements (**Figure 15b**) in accordance with the number of times the elements are so identified. **However, Okuhata**

fails to disclose the use of ranking a scheduled broadcasting program. Bansal teaches **(page 6 paragraph (0086) lines 1-4)** each guide factory has a numeric priority.

Therefore, it would have been obvious at the time of the invention to include the use of ranking a scheduled broadcast. This is a useful combination because it allows clients to automatically assign a priority for utilization of memory efficiently.

Regarding claim 39, Bansal discloses a broadcasting system according to claim 38 wherein the asset processor comprises an encoder for encoding broadcast elements **(page 2 paragraph (0025) lines 13-15)**.

Regarding claim 40, Okuhata discloses a broadcasting system wherein the asset processor comprises an editing tool for editing broadcast elements **(page 3 paragraph (0037) lines 14-16)**.

Regarding claim 41, Bansal discloses a broadcasting system wherein the asset processor comprises a programming tool **(page 3 paragraph (0037))** for programming data and/or processes relating to broadcast elements **(Schedule Opening Replay (88) in figure 4d Okuhata)**.

Regarding claim 42, Okuhata discloses a broadcasting system wherein the asset processor comprises a programming tool **(page 3 paragraph (0037))** for programming scheduling criteria **(Schedule Connection Request (76) in figure 4b Okuhata)**.

Regarding claims 43-44, Okuhata discloses a broadcasting system wherein, in use, stored users' input data comprises at least one broadcast element (**Broadcast Control Information**).

Regarding claim 45, Bansal discloses a broadcasting system according to claim 44 arranged such that two or more channels each carry a unique set of broadcast elements (**page 1 paragraph (0006)**).

Regarding claims 46-47, Bansal discloses a broadcasting system according to claim 44 arranged such that two or more channels (**page 1 paragraph (0009)**) share at least one broadcast element from the asset store (**Storing Unit (15) in figure 2b**) users' input data (**page 2 paragraph (0006) Okuhata**).

Regarding claim 48, Bansal discloses a broadcasting system for supporting more than one independently interactive broadcasting channel (**page 10 paragraph (0160) lines 15-18**).

Regarding claim 51, Okuhata discloses a user input processor for use in supporting more than one broadcast channel during the same broadcast period (**figure 3a**), wherein the user input processor is adapted to sort user inputs according to channel (**page 6 paragraph (0086) lines 1-4 Bansal**).

Regarding claims 59-62, Okuhata discloses a method wherein step iii) comprises re-ordering the list (**Figure 11b**) of broadcast elements (**page 6 paragraph (0086) lines 1-4**). (**paragraph (10) shows that a response from another scheduler is received within a given time. This being minutes, hours or seconds**).

Regarding claim 63, Okuhata discloses a method further comprising the steps of:
iv) receiving users' inputs (**page 2 paragraph (0006)**) identifying at least one of the broadcast elements on the list (**Broadcast Control Information (60) in figure 4a**); and
v) generating a re-ordered list of programmed broadcast from said list (**page 6 paragraph (0086) lines 1-4**), in accordance with the users' inputs (**User Input (42) in figure 2a**).

Conclusion

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKLIN S. ANDRAMUNO whose telephone number is (571)270-3004. The examiner can normally be reached on Mon-Thurs (7:30am - 5:00pm) alternate Fri off (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571)272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/
Supervisory Patent Examiner, Art
Unit 2424